Woman Suffrage Cases. *Municipal Suffrage in Home Rule Cities.* State v. French (Ohio, April 3, 1917, 117 N. E. 173). A municipality adopting a home rule charter may incorporate in it a provision allowing women to vote in municipal elections. This is true in spite of the fact that the state constitution stipulates that "white male citizens" may vote.

The power of a home rule city thus to regulate municipal suffrage qualifications rests upon the analogy of the school suffrage cases. An early Ohio decision upheld the right of the legislature to allow women to vote in school elections on the ground, first, that school officers were not mentioned in the state constitution, and second, that that document gave the legislature full power to establish and maintain a common school system. If this case is sound, as is indicated by an overwhelming weight of authority, then for the same reasons the grant to cities by the constitution itself of authority over all municipal affairs would seem to include the right to regulate the qualifications of voters in municipal elections which are not provided for by the constitution. The court was asked to uphold the power in question on the theory that the legislature may determine the suffrage qualifications for all elections not specifically mentioned in the constitution and that the city is here acting in the place of the legislature. It declined, however, to affirm or deny the soundness of this doctrine, preferring to base its decision upon the less controverted ground above stated. An elaborate dissenting opinion is appended to that of the majority.

Suffrage by Legislative Grant for Extraconstitutional Offices. Board of Election Commissioners of City of Indianapolis v. Knight (Indiana, October 26, 1917, 117 N. E. 565). The "Partial Suffrage Act" of Indiana, passed in May, 1917, purported to confer upon women the right to vote for all officers and questions not mentioned in the state constitution but provided for by statute. A taxpayer's action to enjoin the enforcement of the act alleged its unconstitutionality. In holding the statute invalid the supreme court of Indiana has added an important decision to what now seems to be the weight of authority in an exceedingly interesting conflict of law.

The issue raised in this case is briefly this: Does a clause of the state constitution, defining suffrage qualifications in terms of male citizenship and residence, prevent the legislature from extending to women the right to vote in elections not provided for or mentioned in the constitution but created by the legislature itself?

The argument supporting the right of the legislature to confer this partial suffrage upon women ran something as follows: The constitutional clause providing for male suffrage is not a grant to the legislature of power it would otherwise lack but merely a limitation upon its otherwise unlimited authority in the matter of suffrage qualifications. It is a restriction, furthermore, only in respect to the offices and questions specifically mentioned in the constitution. Accordingly the clause in the Indiana constitution giving male citizens the suffrage "in all elections not otherwise provided for by this Constitution" actually means that the male monopoly of the right to vote exists only "in all elections mentioned in this Constitution and not otherwise provided for by it," and that the legislature may fix suffrage qualifications to suit itself in all other elections. This position was alleged to be further strengthened by another clause which stipulated that "all officers whose appointments are not otherwise provided for in this Constitution shall be chosen in such manner as now is, or hereafter may be, prescribed by law."

These arguments found no favor with the Indiana court. Its opinion, invalidating the suffrage law, may be summarized under five main heads. First: The constitutional clause defining suffrage qualifications is an exception to the usual rule that state constitutional provisions are restrictions on legislative power rather than grants of authority. This clause is the source of the power of the legislature to make laws regarding the right to vote and that body has no power over suffrage qualifications which is not authorized by or is in conflict with this provision. Second: The constitution does state that officers whose appointments are not otherwise provided for in the constitution shall be chosen "in such manner as now is, or hereafter may be, prescribed by law." But this right to prescribe the "manner" in which officers are to be chosen "has reference only to the method or mode of selection (whether by appointment or popular election), and does not include the power to determine the qualifications of the legal voters." Third: The cases which have sustained the power of the legislature to extend suffrage to women in school elections, without specific constitutional sanction, do not constitute precedents for the present suffrage law. The right to control the school suffrage is based on the plenary constitutional authority of the legislature "to develop the public school system and provide for its administration." Fourth: The clause in the Indiana constitution giving male citizens the suffrage "in all elections not otherwise provided for by this Constitu-

tion," must be construed as meaning literally "all elections," regardless of their origin, "for anything connected with the general government, or the state or local government." By its terms the clause leaves no room for legislative control of suffrage in extraconstitutional elections. Finally, a survey of the legislative history of the state in the matter of legislative control of suffrage qualifications, a survey too extended even to be summarized, leads to the conclusion that there is no respectable precedent for the authority claimed in the partial suffrage act.

This interesting opinion invites brief comparison with the conflicting Illinois decision in Scown v. Czarnecki (1914), 264 Ill. 305, 106 N. E. 276, upholding the constitutionality of the Illinois partial suffrage act of 1913. With statutes of precisely the same character and with constitutional clauses relating to suffrage qualifications which were practically identical, the issues raised in these two cases are exactly the same. The supreme courts of Indiana and Illinois differ irreconcilably upon two points. In the first place, is the constitutional clause defining suffrage qualifications a grant of legislative power or is it a limitation upon it? The Indiana court takes the former view and the Illinois court the latter. The Illinois theory leaves the legislature in possession of residuary power to control suffrage qualifications in the absence of specific constitutional inhibition. The Indiana doctrine gives no such power. In the second place, there is a clash as to the proper way to interpret the school suffrage cases, precedents for the legislative regulation of suffrage qualifications too numerous and long-standing to be ignored or lightly brushed aside. It has been seen that the supreme court of Indiana declares that the power of the legislature to prescribe the qualifications of voters in school elections is based on the plenary power of that body over the public school system and not upon the fact that school elections are of statutory rather than constitutional origin. The school suffrage is thus entirely anomalous and has been so regarded by the courts. The Illinois court takes the opposite view. Even courts which have recognized in school suffrage cases the unrestricted power of the legislature over the school system have not permitted that body to alter the constitutional suffrage qualifications for school elections provided for by the constitution. It is the nonconstitutional character of the school election which has made it possible for the legislature to control school suffrage. Furthermore there is nothing peculiar about the grant of authority to maintain a school system, and no reason why it alone of all the constitu-

tional clauses granting legislative power should carry with it, by implication, this highly important control over suffrage qualifications.

It must be admitted that several of the school suffrage cases would seem to be conveniently available as authorities for both sides of this controversy. (Plummer v. Yost, 144 Ill. 68, 33 N. E. 191; Belles v. Burr, 76 Mich. 1, 43 N. W. 24.) It is not surprising, therefore, to find the Indiana court citing them for its own use and criticizing the reliance upon them of the supreme court of Illinois as "an erroneous application of the doctrine of stare decisis." Its view of these cases seems furthermore to be the same as that of the supreme court of Michigan, expressed in a case denying the right of the legislature to regulate municipal suffrage qualifications. (Coffin v. Board of Election Commissioners, 97 Mich. 188, 56 N. W. 567.)